

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Dennis L. & Anna C. Peters

Chapter 7

Debtor

BK 04-33120

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No.

Dennis L. & Anna C. Peters

Defendants.

COMPLAINT OBJECTING TO DISCHARGE

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney for his complaint against Dennis L. & Anna C. Peters, defendant debtors, states and alleges that:

1. This complaint is filed under FED. R. BANKR. P. 7001(4) and seeks an order denying the defendant debtors discharge pursuant to 11 U.S.C. § 727(a)(9).
2. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.
3. The United States Trustee has standing to commence this adversary proceeding pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 727(c)(1).
4. The defendant debtors, Dennis L. & Anna C. Peters, are residents of Minnesota.
5. The defendant debtors commenced the present bankruptcy case on May 25, 2004 (Bankr. Case No.04-33120). *See* Att. Ex. 1 (BANCAP Report).

6. The defendant debtors commenced a prior chapter 13 bankruptcy case on February 23, 1999 (Bankr. Case No. 99-30918). Jasmine Keller was appointed as Chapter 13 trustee. A chapter 13 plan was confirmed on May 19, 1999 and later modified on March 14, 2002. Thereafter the defendant debtors received a discharge under 11 U.S.C. § 1328 in the Chapter 13 case on June 4, 2004. *See* Att. Ex. 2 (United States Bankruptcy Court, District of Minnesota, Web Page Report for Bankr. Case No. 99-30918).

7. 11 U.S.C. § 727(a)(9) provides that the Court shall grant a debtor a discharge unless the debtor has been granted a discharge under Section 1328 in a case commenced within six years before the date of the filing of the present petition:

...unless payments under the plan in such case totaled at least--

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the

debtor's best effort;

8. The defendant debtors' previously confirmed Chapter 13 plan provided for payment of the allowed unsecured claims in the total amount of forty-three percent (4.66%). *See* Att. Ex. 3 (Aff. of Thomas Johnson).

9. The defendant debtors do not qualify for the one hundred percent (100%) or the seventy percent (70%) exception provided by Section 727(a)(9).

10. The previously filed Chapter 13 case of the defendant debtors in which they received a discharge under Section 1328 was commenced within six years before the date of the filing of the

present chapter 7 petition.

11. The defendant debtors are not entitled to a discharge of their debts in this case pursuant to 11 U.S.C. § 727(a)(9).

12. The defendant debtors failed to disclose the prior bankruptcy case on the Voluntary Petition of the present case under the category marked "PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)." *See* Att. Ex. 4 (Voluntary Petition). It should be noted that the Chapter 13 wage deduction order in the prior case was stopped on March 24, 2004, and the discharge was granted in the Chapter 13 case was entered within weeks after this bankruptcy case filing.

WHEREFORE, the Plaintiff requests that this Court enter judgment denying the defendant debtors' discharge herein, together with such other and further relief as the Court seems just.

Dated: August 13, 2004

HABBO G. FOKKENA
UNITED STATES TRUSTEE
REGION 12

BY: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
Office of the United States Trustee
Suite 1015 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415
(612) 664-5500
IA ATTY NO. 14014

Exhibit 1

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U.S. Bankruptcy Court
District of Minnesota (St. Paul)

Bankruptcy Petition #: 04-33120

Date filed: 5/25/04

Assigned to: CHIEF JUDGE GREGORY F KISHEL

Chapter 7 voluntary individual no asset joint

* Attorneys *

=====

DENNIS LEROY PETERS
822 3RD ST N
ST JAMES, MN 56081
SSN: XXX-XX-5537
* Debtor *

CHRISTOPHER M KENNEDY
KENNEDY & KENNEDY
PO BOX 3223
MANKATO, MN 56002-3223
507-345-4582

ANNA CAROL PETERS
822 3RD ST N
ST JAMES, MN 56081
SSN: XXX-XX-2236
* Debtor *

CHRISTOPHER M KENNEDY
(See above)

MICHAEL S DIETZ
505 MARQUETTE BLDG
PO BOX 549
ROCHESTER, MN 55903
* Trustee *

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415
* U S Trustee *

Proceedings include all events.

5/25/04 1 Voluntary Petition all schedules and statements. (Filing
Fee \$ 209.00 Receipt # 146167) ELECTRONICALLY FILED BY
ATTORNEY CHRISTOPHER M KENNEDY ON TUES MAY 25 9:37 AM 2004.
(md) [EOD 05/26/04]

5/26/04 2 Declaration of Original Signature Re: [1-1] Voluntary
Petition . (md) [EOD 05/26/04]

5/26/04 3 Creditor list supplied by debtor. (mpd) [EOD 05/26/04]

5/26/04 4 Appointment of Interim Trustee and Approval of Bond. (md)

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Proceedings include all events.

04-33120 In re: DENNIS LEROY PETERS and ANNA CAROL PETERS

[EOD 05/26/04]

5/26/04 5 Notice of Meeting of Creditors under 11 USC 341(a)
Scheduled For 11:00 7/7/04 At Mankato Last Day To Oppose
Discharge: 9/7/04 Certificate of Service. (md)
[EOD 05/26/04]

6/18/04 6 Notice of Returned Mail Re: Creditor BFI OF MN INC AND
IMMANUEL ST JOSEPH HOSPITAL. (md) [EOD 06/18/04]

Exhibit 2

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U.S. Bankruptcy Court
District of Minnesota (St. Paul)

Bankruptcy Petition #: 99-30918

Date filed: 2/23/99

Assigned to: JUDGE DENNIS D O'BRIEN

Chapter 13 voluntary asset joint

* Attorneys *

DENNIS LEROY PETERS
822 3RD ST N
ST JAMES, MN 56081
SSN: XXX-XX-5537
* Debtor *

CURTIS K WALKER
4356 NICOLLET AVE S
MINNEAPOLIS, MN 55409
612-824-4357

ANNA CAROL PETERS
822 3RD ST N
ST JAMES, MN 56081
SSN: XXX-XX-2236
* Debtor *

CURTIS K WALKER
(See above)

JASMINE Z KELLER
12 S 6TH ST STE 310
MINNEAPOLIS, MN 55402
* Trustee *

U S TRUSTEE
1015 U S COURTHOUSE
300 S 4TH ST
MINNEAPOLIS, MN 55415
* U S Trustee *

Proceedings include all events.

2/23/99	1	Voluntary Petition all schedules and statements. ;Proof of Claim (gov) Deadline: 8/23/99 (Filing Fee \$ 160.00 Receipt # 98336) (tjc) [EOD 02/24/99]
2/23/99	2	Chapter 13 Plan. (tjc) [EOD 02/24/99]
2/23/99	3	Matrix. (tjc) [EOD 02/24/99]
2/23/99	4	Worksheet Re: Meeting of Creditors. (tjc) [EOD 02/24/99]

Proceedings include all events.

99-30918 In re: DENNIS LEROY PETERS and ANNA CAROL PETERS

2/24/99	5	Notice of Meeting of Creditors under 11 USC 341(a) Scheduled For 2:15 3/30/99 At Ch. 13 Office Minneapolis Confirmation Hearing Set For 10:30 5/13/99 At St.Paul (Ch. 13 Room) ;Last Day to File Proofs of Claim: 6/28/99 (tjc) [EOD 02/24/99]
2/26/99	6	Courts BNC Certificate of Service Re: [5-1] Meeting . # of Notices: 50 were sent out. (auto) [EOD 02/26/99]
2/26/99	7	Court's Certificate of Mailing Re: [2-1] Chapter 13 Plan . (lmb) [EOD 03/01/99]
3/30/99	--	Meeting of Creditors Held. (vrs) [EOD 03/31/99]
3/31/99	8	Application For Compensation Filed by CURTIS K WALKER Attorney for Debtor. For Compensation (Fees: \$ 875.00,) (sas) [EOD 04/01/99]
4/12/99	9	Order For employer SWIFT & ECKRIDGE INC To Pay Trustee \$ 115.38 BI-WEEKLY. Certificate of Mailing. (tjc) [EOD 04/12/99]
5/13/99	10	Minute Sheet Re: [2-1] Chapter 13 Plan . PLAN CONFIRMED. (tjc) [EOD 05/17/99]
5/17/99	11	Order Confirming [2-1] Chapter 13 Plan . Granting Attorney's Fees in the Amount of \$ 850.00. CERTIFICATE OF MAILING. (tjc) [EOD 05/17/99]
6/3/99	12	AMENDED Order Granting Attorney's Fees in the Amount of \$ 875.00. CERTIFICATE OF MAILING. (sas) [EOD 06/03/99]
8/18/99	13	Added Party to Matrix. (lk) [EOD 08/20/99]
11/13/01	14	Debtor(s) Address Changed Per Chapter 13 Trustee's Office. (lje) [EOD 11/13/01]
1/17/02	15	Motion by Trustee JASMINE Z KELLER To Dismiss or Convert Case . Affidavit. Certificate of Service. (tja) [EOD 01/17/02]
1/17/02	--	Hearing Re: [15-1] Motion To Dismiss or Convert Case by JASMINE Z KELLER scheduled For 10:00 2/14/02 at Courtroom 228A (St. Paul) . (tja) [EOD 01/17/02]
2/6/02	16	Response by Debtor DENNIS LEROY PETERS, Debtor ANNA CAROL PETERS to [15-1] Motion To Dismiss or Convert Case by JASMINE Z KELLER. CERTIFICATE OF SERVICE. (sas) [EOD 02/06/02]
2/6/02	17	Application For Postconfirmation Compensation Filed by CURTIS K WALKER Attorney for Debtor. For Compensation (Fees: \$ 225.00,) (sas) [EOD 02/06/02]

Proceedings include all events.

99-30918 In re: DENNIS LEROY PETERS and ANNA CAROL PETERS

2/7/02 18 Order for employer DEGUSSA CONSTRUCTION CHEMICAL to Pay Trustee \$ 250.00 MONTHLY. Certificate of Mailing. (tja) [EOD 02/07/02]

2/14/02 -- Minutes Re: [15-1] Motion To Dismiss or Convert Case by JASMINE Z KELLER . MOTION STRICKEN. (sas) [EOD 02/21/02]

2/15/02 19 ELECTRONIC Order Denying [15-1] Motion To Dismiss or Convert Case by JASMINE Z KELLER . (DDO: 2/15/02) CERT. OF MAILING. (sas) [EOD 02/15/02]

2/20/02 20 Motion By Debtor DENNIS LEROY PETERS, Debtor ANNA CAROL PETERS To Confirm Modified Plan. AFFIDAVIT. MEMORANDUM. CERTIFICATE OF SERVICE. PROPOSED ORDER. (sas) [EOD 02/20/02]

2/20/02 -- Hearing Re: [20-1] Motion To Confirm Modified Plan by ANNA CAROL PETERS, DENNIS LEROY PETERS Scheduled For 10:30 3/14/02 at Courtroom 228A (St. Paul). (sas) [EOD 02/20/02]

2/20/02 21 Modified Chapter 13 Plan filed by Debtor DENNIS LEROY PETERS, Debtor ANNA CAROL PETERS . (sas) [EOD 02/20/02]

2/20/02 22 Application For Postconfirmation Compensation Filed by CURTIS K WALKER Attorney for Debtor. For Compensation (Fees: \$ 225.00,) (sas) [EOD 02/20/02]

2/22/02 23 ELECTRONIC Order Granting Postconfirmation Attorney's Fees Re: [17-1] Application For Compensation (Fees: \$ 225.00,) in the Amount of \$ 225.00 (DDO: 2/22/02). CERTIFICATE OF MAILING. (sas) [EOD 02/22/02]

3/14/02 -- Minutes Re: [20-1] Motion To Confirm Modified Plan by ANNA CAROL PETERS, DENNIS LEROY PETERS . MODIFIED PLAN CONFIRMED. (sas) [EOD 03/14/02]

3/14/02 24 Order Confirming Postconfirmation [21-1] Modified Plan by ANNA CAROL PETERS, DENNIS LEROY PETERS . (sas) [EOD 03/14/02]

3/16/02 25 Courts BNC Certificate of Service Re: [24-1] Order Post Chapter 13 plan . # of Notices: 5 were sent out. (auto) [EOD 03/19/02]

3/22/02 26 Order for employer CONAGRA GROCERY PRODUCTS to Pay Trustee \$ 304.61 BI-WEEKLY. Certificate of Mailing. (tja) [EOD 03/22/02]

3/25/02 27 ELECTRONIC Order Granting Postconfirmation Attorney's Fees Re: [22-1] Application For Compensation (Fees: \$ 225.00,) in the Amount of \$ 225.00 (DDO: 3/25/02). CERT. OF MAILING. (sas) [EOD 03/25/02]

8/21/02 28 Order for employer KUEHL TRANSIT to Pay Trustee \$ 152.31 WEEKLY. Certificate of Mailing. (dlt) [EOD 08/21/02]

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Proceedings include all events.

99-30918 In re: DENNIS LEROY PETERS and ANNA CAROL PETERS

3/23/04	29	Application for order to stop wage deductions. Proposed Order. (A324) [EOD 03/23/04]
3/24/04	30	Order to Stop Wage Deduction. Certificate of mailing. (dlt) [EOD 03/24/04]
6/4/04	--	Certificate of Completion of Payments under plan, subject to claims filed before the Discharge, but after claim number 25. Request for Discharge. (A324) [EOD 06/04/04]
6/4/04	31	Order Discharging Debtor ANNA CAROL PETERS, Debtor DENNIS LEROY PETERS . Certificate of Service. (tja) [EOD 06/04/04]
7/26/04	32	Debtor(s) Address Changed Per Letter. (A324) [EOD 07/26/04]

Exhibit 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Dennis L. & Anna C. Peters

Chapter 7

Debtor.

BK 04-33120

AFFIDAVIT OF THOMAS JOHNSON

I, Thomas Johnson, being duly sworn and under oath, state that:

1. I am Counsel for Jasmine Keller, Chapter 13 Trustee in the District of Minnesota.
2. Dennis L. and Anna C. Peters filed a prior bankruptcy case under Chapter 13 of the Bankruptcy Code on February 23, 1999.
3. The case number of the prior Chapter 13 case was 99-30918.
4. The Peters' Chapter 13 plan was confirmed on May 17, 1999. A modification to the Chapter 13 plan was later approved by Order dated March 14, 2002.
5. The Order discharging the Peters in Bankr. No. 99-30918 was entered on June 4, 2004.
6. In Bankr. No. 99-30918, payments under the plan totaled 4.66% of allowed unsecured claims.

Dated: 8/12/04

Thomas E. Johnson
Thomas Johnson
Counsel

Subscribed and Sworn before Me in the County of Hennepin on the 12th day of August, 2004.

Laurie A. Frey
Notary Public



Exhibit 4

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Peters, Dennis LeRoy Peters, Anna Carol	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed: - None -	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: - None -	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Signatures			
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. X <u>/s/ Dennis LeRoy Peters</u> Signature of Debtor Dennis LeRoy Peters X <u>/s/ Anna Carol Peters</u> Signature of Joint Debtor Anna Carol Peters Telephone Number (If not represented by attorney) <u>May 24, 2004</u> Date		Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) <input type="checkbox"/> Exhibit A is attached and made a part of this petition. Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. X <u>/s/ Christopher M Kennedy 0258854</u> <u>May 24, 2004</u> Signature of Attorney for Debtor(s) Date Christopher M Kennedy 0258854 Exhibit C Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No	
Signature of Attorney X <u>/s/ Christopher M Kennedy 0258854</u> Signature of Attorney for Debtor(s) Christopher M Kennedy 0258854 Printed Name of Attorney for Debtor(s) KENNEDY & KENNEDY Firm Name 99 Navaho Avenue Suite 104 Mankato, MN 56002-3223 Address 507/345-4582 Fax: 507/345-1010 Telephone Number <u>May 24, 2004</u> Date		Signature of Non-Attorney Petition Preparer I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. Printed Name of Bankruptcy Petition Preparer Social Security Number (Required by 11 U.S.C. § 110(c).) Address Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document: If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. X _____ Signature of Bankruptcy Petition Preparer Date A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.	
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition. X _____ Signature of Authorized Individual Printed Name of Authorized Individual Title of Authorized Individual Date			

VERIFICATION

I, Sarah J. Wencil, Trial Attorney for the United States Trustee, the petitioner herein, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on August 13, 2004

/s/ Sarah J. Wencil

Sarah J. Wencil

Trial Attorney

Suite 1015 U.S. Courthouse

300 S. 4th Street

Minneapolis, MN 55415

(612) 664-5500

IA ATTY NO. 14014